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# Presidential Documents

Title 3—

The President

**Proclamation 6584 of August 1, 1993**

## Helsinki Human Rights Day, 1993

**By the President of the United States of America**

**A Proclamation**

Since its inception in the 1970's, the Conference on Security and Cooperation in Europe (CSCE) has been the premier forum in which the ongoing struggle for human rights and the dignity and worth of individuals in European nations has been waged. In the wake of the instability created by the outbreak of war in the former Yugoslavia, the CSCE states have embraced a strategy of preventive diplomacy as a way of resolving differences before they lead to conflict. The CSCE's approach of combining a strong emphasis on human rights, preventive diplomacy, and multilateral action is an example of the kind of foreign policy I seek to pursue.

Yet, the dire situation in the former Yugoslavia gives pause to those who want to believe that the CSCE's principles will be respected in nations emerging from totalitarian rule. We must work with these nations in order to guide them toward the principles we hold dear.

The CSCE has made a major contribution even in areas of instability and conflict. Through conflict-prevention missions, monitoring of sanctions, sponsorship of the Nagorno-Karabakh negotiations, activities of the High Commissioner on National Minorities, and the energetic program of the Office for Democratic Institutions and Human Rights, participating states have demonstrated their collective political commitment to transform CSCE principles into reality.

As we grapple with the great challenges the CSCE faces, we reaffirm our belief that security cannot be divorced from respect for human rights and the democratic process. We also reaffirm our commitment to the advancement of the rights of individuals, for it was individuals who stood in front of tanks and tore down the walls that split East from West. Individuals braved the wrath of repressive regimes in order to call on them to live up to their CSCE commitments. And individuals today continue to struggle to build democratic societies at peace with their neighbors. The groundbreaking work of the CSCE in establishing human rights and other standards to which all CSCE states have committed themselves has permanently strengthened European security.

In recognition of the contributions of the CSCE toward the expansion of human rights, the Congress, by Senate Joint Resolution 111, has designated August 1, 1993, as "Helsinki Human Rights Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim August 1, 1993, as Helsinki Human Rights Day and reaffirm the American commitment to upholding human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs and activities, let us remember our courageous citizens who have made sacrifices to secure the freedoms that we enjoy. Let us work together to encourage respect for human rights and democratic values in all CSCE states.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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# Rules and Regulations

Federal Register
Vol. 58, No. 149
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## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 550**

**RIN 3206–AE30**

## Pay Administration (General); Advances in Pay

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on advances in pay for newly hired employees, as authorized by section 107 of the Federal Employees Pay Comparability Act of 1990 and E.O. 12748 of February 1, 1991. The head of an agency may provide an advance in pay, covering not more than 2 pay periods, to a newly appointed employee.

**EFFECTIVE DATE:** The final rule is effective on September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Perrini, (202) 606–1413.

**SUPPLEMENTARY INFORMATION:** On March 28, 1991, OPM published interim regulations to implement section 107 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509, November 5, 1990), codified at 5 U.S.C. 5524a, which provides that the head of an agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency. (See 56 FR 12833.)

The 60-day public comment period ended on May 28, 1991. Comments were received from six Federal agencies and one labor organization. Comments, as well as certain modifications and clarifications of the interim regulations, are summarized below.

### General Comments

One agency commented that the time period during which an advance payment may be made should be extended to the first 60 days following appointment. The agency believes the additional time would allow an employee more time to assess his or her financial needs and would be more consistent with the military personnel system, which generally permits 1 month's advance pay to members in receipt of orders to a permanent change of station (including reserve forces members ordered to active duty) within the first 60 days of arrival at the new/first duty station. Another agency recommended that the time period for authorizing an advance payment be extended to at least 30 days following appointment and that the time limit for issuing payment be tied to the date the authorization for payment is granted, rather than the date the employee receives the first regular paycheck. The agency believes new employees may not realize they need the advance payment until a week or more after entering on duty and that many agencies cannot process payments before the date of the first regular paycheck.

The law does not provide a maximum time limit for authorizing an advance payment. The purpose of an advance payment under 5 U.S.C. 5524a is to provide a newly appointed employee payment prior to, or in addition to, his or her first regular paycheck to assist in paying immediate expenses that are normally incurred as a result of starting a new job and/or relocating to a new geographic area. After an employee receives his or her first regular paycheck, the need for an advance payment is less critical. However, OPM realizes that in some cases, agencies may need additional time to process advance payments and newly appointed employees may need additional time to evaluate their financial needs. As a result of the agencies' concerns, OPM has amended the regulations to extend the maximum time limit for making an advance payment. An advance payment may be made to a newly appointed employee no earlier than the date of appointment with the agency and no later than 60 days after appointment. To ensure that employees receive an advance payment when it is most needed, OPM encourages agencies to make an advance payment as soon as practicable after the employee is appointed to the agency.

### Estimated Deductions

The interim regulations state that the maximum amount that may be advanced is the amount of basic pay to which the employee is entitled on the date of appointment, reduced by the amount of any applicable allotments or deductions from pay. An agency recommended that the regulations be revised to clarify that the maximum amount that may be advanced should not exceed the amount estimated to be available after normal deductions. The agency noted that the actual amount of allotments or deductions may not be known until normal payroll processing for the first 2 pay periods. Allowing the use of estimates would greatly expedite payment of the advance to the employee and reduce processing costs.

The regulations have been amended so that an advance payment will more closely reflect the net amount of pay the employee will receive in his or her first regular paycheck. Agencies are instructed to reduce the gross amount of an advance payment by the exact amount of each applicable deduction wherever practicable. In some cases, actual deductions are required. The Internal Revenue Service (IRS) has determined that an advance payment is considered to be income at the time of payment and is subject to deductions for Federal Insurance Contributions Act (FICA) tax and Federal income tax withholdings. Agencies must determine the exact amounts of FICA tax and Federal income tax withholdings to be subtracted from the advance payment. In a memorandum to Federal Personnel Directors dated August 3, 1992, OPM provided agencies with additional information on the tax consequences of receiving an advance payment.

In most cases, actual deductions will not be made. Estimates may be used for deductions or allotments for which the agency does not yet know the employee's preferences—e.g., life and health insurance premiums and Thrift Savings Plan contributions. In addition, since OPM accepts deductions for retirement contributions, health benefits, and life insurance premiums only as of the date of each regular paycheck, these deductions will not actually be paid to OPM. Rather, the gross advance payment will be reduced

as though such deductions were actually made so that the computation of the advance payment approximates the computation of the employee's first regular paycheck to the maximum extent practicable.

**Use of Imprest Funds**

An agency asked OPM to consult with the Department of the Treasury to obtain authorization for use of imprest funds by Federal agencies to make advance payments. We contacted the Department of the Treasury's Financial Management Service in Kansas City, Kansas, and learned that a revision of the Treasury Financial Manual has been drafted to allow agencies to use imprest funds for advance payments, as long as the advance payment is consistent with 5 U.S.C. 5524a. The revised Treasury Financial Manual is expected to be published at the end of June 1993. Agencies should contact the Kansas City Financial Management Service for additional guidance on this matter.

**Definition of "Newly Appointed" Employee**

An agency requested that excepted service positions be included under this provision. Section 5524a of title 5, United States Code, provides authority to the head of each agency to make an advance payment of basic pay to any "individual who is newly appointed to a position in the agency." This broad authority includes employees appointed to the excepted service.

**Waiver of Repayment**

An agency asked whether an agency head may waive any dollar amount of repayment of an advance payment if the agency head determines that recovery would be against equity and good conscience or against the public interest criteria established by the agency. Neither the statute nor the final regulations place any limit on the dollar amount an agency head may waive under 5 U.S.C. 5524a.

**Definition of "Rate of Basic Pay"**

In the interim regulations, the definition of "rate of basic pay" included annual premium pay for standby duty under 5 U.S.C. 5545(c)(1). The labor organization commented that the rate of basic pay should also include annual premium pay for administratively uncontrollable overtime (AUO) work, as authorized by 5 U.S.C. 5545(c)(2). The intent of an advance payment is to provide an amount that reflects the pay the employee will receive in his or her first regular paycheck. If annual premium pay has been authorized for a specific position, the employee will receive the appropriate amount in his or her first regular paycheck. OPM has modified the definition of "rate of basic pay" to include annual premium pay for AUO work.

**Prepayment of Balance Due**

Section 550.204(c)(3) of the interim regulations requires agencies to notify an employee that he or she may prepay all or part of the balance of an advance in pay at any time before the money is due. The labor organization recommended that this section be supplemented to require agencies to instruct employees on where and how such prepayments can be made. OPM agrees and has amended the regulations to include this requirement.

**Payroll Allotments**

The labor organization commented that § 550.204(d) of the regulations should eliminate agency discretion in establishing procedures for payroll allotments from an advance payment. The labor organization believes that agencies should be required to establish procedures that allow allotments from an advance payment on the same basis as regular pay. Section 550.204(d) is consistent with 5 U.S.C. 5525, which authorizes the head of an agency to establish procedures under which an employee is permitted to make allotments and assignments of amounts out of his or her pay for such purpose as the head of the agency considers appropriate. OPM believes modification of § 550.204(d) is unwarranted.

**Recovery Period**

The interim regulations authorize an agency to establish a recovery period of no longer than 13 pay periods for each employee to repay an advance payment. The labor organization commented that a maximum term of 13 pay periods for repaying an advance payment is far too short, since it may result in deductions of more than 15 percent of an employee's disposable pay. The labor organization commented that under these circumstances, employees would be well advised to invoke the salary offset provisions in 5 CFR part 500, subpart K, which limits deductions to no more than 15 percent of disposable pay per pay period, unless a larger deduction is requested by the employee. The labor organization recommended that the regulations be amended to include a requirement that agencies notify an employee in writing of his or her right to: (1) Cap a payroll deduction installment at 15 percent of disposable pay, and (2) voluntarily request any payroll deductions in excess of this amount. The labor organization commented that the length of recovery periods could be left to agency discretion and be a subject of bargaining between agencies and their exclusive representatives.

OPM calculated that, in most cases, it would take slightly more than 13 pay periods to repay the maximum payable net advance payment if no more than 15 percent of disposable pay is deducted. Limiting the deduction to a maximum of 15 percent of disposable pay is consistent with the salary offset provisions in 5 CFR part 550, subpart K. Therefore, OPM has amended the interim regulations to allow an agency to establish a recovery period of no more than 14 pay periods to repay an advance payment. In addition, the recovery period has been amended to begin on the date the advance payment is made to the employee, rather than on the date of appointment. Shorter recovery periods may be established upon written request by an employee. OPM does not believe a longer recovery period is warranted, since the intent of an advance payment is to provide a "loan" to an employee to assist in meeting immediate financial obligations. Under § 550.204(c)(1), employees will be notified of their rights under the salary offset provisions, since before making an advance payment, the agency must provide each employee a statement indicating how the advance payment will be recovered, either in installments under agency procedures for payroll deductions or by salary offset procedures under 5 CFR part 550, subpart K.

**Miscellaneous**

A new paragraph has been added to § 550.203 to clarify that the head of an agency, or an employee appointed to a position in the expectation of receiving an appointment as the head of an agency, may not receive an advance payment under 5 U.S.C. 5524a.

The definition of "newly appointed" in § 550.202 was expanded to allow cooperative education (co-op) students who are on leave without pay for at least 90 days pending conversion to the competitive service to receive an advance payment when they receive their first permanent appointment in the competitive service. A co-op student may receive the advance payment only if he or she has repaid any former advance in pay that may have been received upon his or her first appointment in the Federal service—i.e., an appointment to his or her first work session.

Finally, it should be noted that OPM is amending § 550.202, which was

adopted as final with changes on January 22, 1992 (57 FR 2431).

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

**List of Subjects in 5 CFR Part 550**

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

Accordingly, the interim regulations in 5 CFR part 550, subpart B, published on March 28, 1991, at 56 FR 12833, as amended by final rules published on January 22, 1992, at 57 FR 2431, are adopted as final with the following changes:

## PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for part 550, subpart B continues to read as follows:

### Subpart B—Advances in Pay

**Authority:** 5 U.S.C. 5524a; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. In § 550.202, the definitions of *newly appointed* and *rate of basic pay* are revised to read as follows:

**§ 550.202 Definitions.**

* * * * *

*Newly appointed* means—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) A new appointment following a break in service of at least 90 days; or

(c) A permanent appointment in the competitive service following a period of leave without pay for at least 90 days received after termination of employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter, provided such employee has fully repaid any former advance in pay under § 550.205 of this part.

* * * * *

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay under 5 U.S.C. 5545(c); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this chapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304, any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees pay Comparability Act of 1990 (Pub. L. 101–509), respectively; but not including additional pay of any other kind.

3. In § 550.203, paragraphs (a), (b), and (c) are revised and paragraph (e) is added to read as follows:

**§ 550.203 Advances in pay.**

(a) The head of an agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to an employee who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any allotments or deductions that would normally be deducted from the employee's first regular paycheck.

(c) An advance in pay may be made to an employee no earlier than the date of appointment with the agency and no later than 60 days after the date of appointment.

* * * * *

(e) An advance in pay may not be made to the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

4. In § 550.204, paragraph (c)(3) is revised to read as follows:

**§ 550.204 Agency procedures.**

* * * * *

(c) * * *

(3) A statement indicating that the employee may prepay all or part of the balance of the advance payment at any time before the money is due, including instructions as to where and how such prepayments may be made.

* * * * *

5. In section 550.205, paragraph (b) is revised to read as follows:

**§ 550.205 Recovery of advances in pay.**

* * * * *

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 14 pay periods beginning on the date the advance in pay is made to the employee under § 550.203 of this part. If a longer period for recovery is necessary to avoid exceeding the limitation on deductions described in § 550.1104(i) of this part, recovery may be accomplished under salary offset procedures established under subpart K of this part. Upon written request, an employee may elect a recover period of less than 14 pay periods.

* * * * *

[FR Doc. 93–18567 Filed 8–4–93; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1446

**RIN 0560–A033**

### Peanuts

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the peanut program regulations to raise to $2.00 per net ton of peanuts the maximum deduction from producer price support advances that may be made by the area marketing association for the Southwest marketing area, as defined in the regulations, for related activities of the association outside the price support program. Such deductions are made only upon prior agreement of the producer and have no effect on the amount of public outlay for the peanut program. This action is necessary to provide applicable rules for 1993 through 1995 crops of peanuts with respect to the request by the area marketing association for the Southwest area, the Southwestern Peanut Growers' Association (SWPGA), that the Commodity Credit Corporation (CCC) amend the regulations to increase the deduction.

**DATES:** This interim rule is effective August 5, 1993. Comments must be received on or before September 7, 1993 in order to be assured of consideration.

**ADDRESSES:** Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, or deliver to room 5750, South Building, 14th Street and Independence Avenue, SW., Washington, DC. All written

comments received in response to this request will be made available for public inspection in room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., on regular workdays.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0152.

SUPPLEMENTARY INFORMATION:

**Executive Order 12291**

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Federal Assistance Program**

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Executive Order 12372**

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Paperwork Reduction Act**

The information collection requirements contained in the regulations at 7 CFR part 1446 for the peanut price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0033. This interim rule does not change the information collection as approved by OMB. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USDA, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the OMB Paperwork Reduction Project (OMB 0560–0006, 0560–0014, or 0560–0033), Washington, DC 20503.

**Background**

Regulations at 7 CFR 1446.303(g)(5) permit the SWPGA, for peanuts produced in the Southwest area, to take a deduction from producer price support proceeds to fund SWPGA's activities not related to price support. Such deductions, which have previously been permitted up to a maximum of $1.00 per net ton, are allowed only upon prior agreement of the producers. Due to increased operating costs and increased activities, the SWPGA Board of Directors directed the association management to petition CCC to allow the deduction to be increased to not more than $2.00 per net ton. As granting the request will not affect public outlays for the program and there does not appear to be any reason to deny the request, it has been determined, pending public comment, to amend the regulations accordingly.

Some producers in the Southwest area traditionally have peanuts ready to deliver for price support on August 1, the first day of the marketing year and the first day price support is available. Delaying the amendment for prior public comment would likely result in the final rule being issued after the beginning of the crop year and possibly after some producers delivered peanuts for price support. For that reason and since the deduction is made only with prior producer approval, it has been determined that such delay is contrary to the public interest and that this interim rule should be issued in order to permit the higher deduction for all 1993-crop price support advances.

Accordingly, this amendment to the peanut regulations is issued as an interim rule with a 30-day comment period.

**List of Subjects in 7 CFR Part 1446**

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR part 1446 is amended as follows:

**PART 1446—PEANUTS**

1. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c.

2. In 7 CFR 1446.303(g)(5), remove the term "$1.00" and add in its place, the term "$2.00".

Signed at Washington, DC, on August 2, 1993.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–18782 Filed 8–2–93; 4:29 pm]

BILLING CODE 3410–05–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 2

[Docket No. RM93–3–000]

### Policy Statement Regarding Regional Transmission Groups; Policy Statement

Issued July 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission is announcing a general policy of encouraging the development of Regional Transmission Groups (RTGs), and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

DATES: This Policy Statement is effective on July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janice G. Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Telephone: (202) 208–0921.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the tests of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a

modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

**Policy Statement Regarding Regional Transmission Groups**

**I. Background**

When Congress enacted the Federal Power Act (FPA) in 1935, it declared in FPA section 201(a) that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest and that Federal regulation of matters relating, inter alia, to the transmission of electric energy in interstate commerce is necessary in the public interest. 16 U.S.C. 824(a). Congress in FPA sections 205 and 206 gave the Federal Power Commission, and later the Federal Energy Regulatory Commission (Commission),[1] the responsibility for regulating the rates, terms and conditions of transmission of electric energy in interstate commerce by public utilities. 16 U.S.C. 824d and e. However, with the exception of certain authority to address war and emergency conditions (now the responsibility of the Department of Energy), 16 U.S.C. 824a (c) and (d), Congress did not give the Commission the explicit authority to order transmission.

This changed in 1978 when Congress, as part of the Public Utility Regulatory Policies Act (PURPA), added section 211 to the FPA, which gave the Commission general authority to order electric utilities to provide transmission to, inter alia, other electric utilities.[2] However, section 211 of the FPA, as enacted in PURPA, was largely unused because the Commission could only order transmission if the Commission determined that the order "would reasonably preserve existing competitive relationships."

The Energy Policy Act of 1992 (Energy Policy Act) has significantly expanded the Commission's authority to order transmission services under section 211.[3] As amended by the Energy Policy Act, section 211 now gives the Commission authority, upon application, to order transmitting utilities, as defined in section 3(23) of the FPA, to provide transmission to electric utilities, Federal power marketing agencies, or any other person generating electric energy for sale for resale, if such action will not unreasonably impair reliability and will be in the public interest. Section 211 allows the Commission to order entities that are not subject to section 205 jurisdiction to provide transmission, and the Commission has authority to review the rate charged by such an entity pursuant to a section 211 order under the standards of section 212.

During the final stages of Congress' consideration of the Energy Policy Act, which, as noted above, significantly expanded the Commission's authority to order transmission upon application, representatives of the electric utility industry and other interest groups presented "consensus" Regional Transmission Group (RTG)[4] legislation for consideration. The consensus proposal would have explicitly required the Commission to "certify" RTGs meeting certain statutory criteria. Included among the criteria were requirements for: Broad membership; an obligation for a member transmission-owning utility to wheel power for others, including an obligation to upgrade its system or build new facilities; coordinated regional transmission planning and information sharing; and fair procedures for decision-making and for dispute resolution. Under the proposal, an RTG that met these (and other) standards for Commission certification would have been entitled to have its decisions receive some degree of deference from the Commission (consistent with the FPA). Moreover, the Commission would have been required to afford some degree of deference to the decisions reached through dispute resolution procedures contained in an RTG agreement. The rates charged for transmission by non-public utilities (i.e., entities not otherwise subject to Commission rate jurisdiction) would have had to meet the substantive FPA rate-making standards and would have been subject to suspension and refund as if they were subject to sections 205 and 206 of the FPA. The consensus proposal set forth procedures for the Commission to impose conditions on certification of RTGs, if necessary, and to exercise continuing oversight. Certification was to be denied if all the affected state commissions unanimously objected to certification. The consensus proposal was presented after the conferees had voted on the provisions of the H.R. 776 Conference Report affecting electric power regulation and was not included in the bill.[5]

On November 10, 1992, the Commission issued a Request for Public Comments on the consensus proposal and solicited comments on how the consensus proposal could be adapted into a proposed rulemaking that would address Commission consideration of RTG agreements affecting matters subject to Commission jurisdiction.[6] We received 100 comments from a wide variety of commenters. Most of the commenters supported the concept of RTGs. However, the comments presented differing views of exactly what an RTG should be and do.[7]

The Commission believes that RTGs can be alternative vehicles for attaining the same goals inherent in the new section 211: Promoting competition in generation, improving efficiency in both short-term and long-term trading in bulk power markets, and reducing the cost of electricity to consumers. RTGs can provide mechanisms for encouraging negotiated agreements and resolving transmission issues without resorting to the procedures under sections 211 and 213 of the FPA.[8] As such, RTGs should reduce the need for potentially time-consuming and expensive litigation before the Commission. To that end, the Commission is announcing a general policy of encouraging the development of RTGs, and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

[1] See Department of Energy Organization Act, 42 U.S.C. 7171.

[2] All public utilities, as defined in the FPA, are electric utilities as defined in the FPA. However, electric utilities include entities that are not public utilities, such as cooperative and municipal utilities.

[3] Pub. L. 102–486, 106 Stat. 2776 (1992).

[4] The Commission defines an RTG as a voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional (and interregional) basis.

[5] See 138 Cong. Rec. S.17,616 and S.17,620–22 (daily ed. Oct. 8, 1992).

[6] 61 FERC ¶ 61,232 (1992).

[7] As discussed infra, the Commission is adopting a general statement of policy rather than a detailed rule. The comments submitted in this docket have provided a very thorough discussion of the issues. However, we discuss below only those comments that are relevant to this Policy Statement.

[8] As the Commission stated in its recent Policy Statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211 and 213: "we believe that as a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation." The Commission also stated that its "guidelines are broad enough to encourage individual initiative and negotiation within a flexible framework, leading to accommodations that will encourage optimum access to this country's transmission system." 58 FR 38964, 38965–66 (July 21, 1993).

## II. Discussion

### *A. The Expected Benefits of RTGs*

A primary purpose of RTGs is to facilitate the provision of transmission services to potential users and voluntarily to resolve disputes over the provision of such services. We believe that RTGs can address disputes over transmission issues in a manner that satisfies the statutory standards of the FPA, and can minimize applications seeking Commission orders for mandatory transmission services under section 211.

Properly functioning RTGs will serve the public interest by enabling the market for electric power to operate in a more competitive, and thus more efficient manner, and by providing coordinated regional planning of the transmission system to assure that system capabilities are adequate to meet system demands. They will decrease the delays that are inherent in the regulatory process, resulting in a more market-responsive industry. RTGs may also significantly enhance regional transmission planning by providing a mechanism for cooperation among state commissions and the utilities they regulate.

Regional transmission needs will change as the generation sector becomes more competitive, thereby affecting many more companies than in the past. Since RTGs bring together both transmitting utilities and their customers (and potential customers) in a region, they can provide a means for companies to coordinate their transmission planning more effectively, avoid costly duplication of facilities, and, in conjunction with their respective state commissions, find more efficient solutions to region-wide problems. This is critical because the transmission network is highly interconnected; thus, the actions of one party often affect many others.

Many transmission issues (e.g., loop flow) are highly technical. As far as possible, those with technical expertise should resolve such issues directly. RTGs can bring together the technical experts from all interested parties to address technical issues directly. This promises to be more productive than using traditional regulatory approaches, which tend to force parties to polarize their positions, as the primary mechanisms for resolving disputes.

As the generation sector continues to become more competitive, the industry will have many new opportunities to trade power. RTGs can provide a forum in which planning data and other useful information can be compiled and exchanged.[9] They can also provide a forum for parties to find workable ways to conduct business with each other. RTGs can develop procedures that make transactions efficient for all—for example, through region-wide trading systems based on electronic bulletin boards. In short, RTGs promise efficient and expeditious solutions to problems that may stem from expanded transmission access.

### *B. Recent Developments—Why the Time Is Ripe for Commission Action*

During the time since the Commission issued the request for public comment on the consensus RTG proposal, there has been considerable activity in various regions of the country concerning the development of RTGs. For example, utilities in New England, California, the upper Midwest, and the Southwest and Northwest regions of the United States have been actively negotiating RTG agreements.[10] Utilities in other regions also may be considering such agreements. All of these regions differ with regard to generating resource mix, transmission system integration, and existing institutional frameworks.[11] These factors, among others, can affect the resolution of planning, access, and operational issues important to RTG agreements. Differences in important regional characteristics support the view, expressed by many in written comments on the consensus proposal, that considerable flexibility is needed in forming RTGs.

Although considerable activity is already underway in various parts of the country toward creating regional transmission organizations, recent events in some of the more advanced negotiations indicate difficulties in reaching final agreements. Recent public reports from both California and New England indicate that negotiations in both of these regions have failed to come to closure. The impasse may be due, in part, to parties' decisions to delay commitment to the RTG process pending action by the Commission. The issuance of this Policy Statement is intended to provide assurance that the Commission encourages these collaborative efforts and to provide guidance as to the basic components that should be included in jurisdictional RTG agreements.

In issuing this Policy Statement, the Commission emphasizes that it intends to use its new transmission authority to ensure that electric generation markets can become fully competitive. However, there are several reasons why we believe that RTGs, as opposed to case-by-case determinations by this Commission, offer the potential to be more effective and efficient in dealing with the complex issues that arise as result of expanded transmission access. First, by including and addressing the needs of all transmission users in a region, RTGs can use the technical expertise of the industry to the benefit of all parties. RTGs can provide a forum for resolving difficult technical issues relating to transmission system operation and planning in a fair and non-discriminatory manner that will benefit all participants. Second, RTGs can provide a practical means for collaboration between the industry and its regulators at both the state and Federal levels. As discussed below, consultation and cooperation with state regulatory authorities are critical to the timely and efficient provision of transmission services. Third, consensual resolution of issues involving transmission in interstate commerce, consistent with the FPA, can lead to enhanced efficiency in both transmission and generation and can reduce expensive and time-consuming litigation before the Commission and possibly state regulatory authorities.

It is important to recognize the Commission's limited authority in the development and success of RTGs. RTGs are purely voluntary associations of transmission owners, users, and others with differing interests. Therefore, the formation of an RTG, by itself, does not insulate its transmitting utility members from proceedings under FPA section 211. However, RTGs that succeed in accommodating all parties' interests, so that members do not feel the need to resort to section 211, will meet the goals intended by the Commission in issuing this Policy Statement. In addition, the Commission will afford an appropriate degree of deference to decisions under an RTG, depending on the degree to which an

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[9] As the Commission noted in its Notice of Proposed Rulemaking proposing to implement the information-collection requirement in section 213, making more information available will improve efficiency, expedite negotiations, and reduce the number of section 211 applications. New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC–714, Proposed Rulemaking, IV FERC Stats. & Regs. ¶32,493 (1993), 58 FR 17,544 (April 5, 1993).

[10] For example, the Southwest Power Pool is considering RTG-like reforms in its Vision Statement of November 1992. The Western Association for Transmission Systems Coordination and the New England Power Pool are also attempting to form RTGs.

[11] For example, in New England, NEPOOL, a centrally dispatched pool, and in the upper Midwest, MAPP, a non-centrally dispatched but highly coordinated pool, both already provide for significant sharing of installed and operating reserves of generation resources. Any RTG in these regions may develop as a complement to these power pools.

RTG agreement mitigates the market power of transmission owners and provides for fair decision-making. The success of RTGs will be determined less by the Commission's approval of RTG agreements than by the consensual resolutions negotiated by the members.

*C. Minimum Components for RTG Agreements*

The Commission does not have authority to "certify" RTGs. However, under section 205(c) of the FPA, public utilities must file with the Commission the classifications, practices, and regulations affecting rates and charges for any transmission or sale subject to the Commission's jurisdiction, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. Thus, a governing agreement or other RTG-related agreement that in any manner affects or relates to jurisdictional transmission rates or services must be approved or accepted by this Commission as just, reasonable, and not unduly discriminatory or preferential under the FPA.[12] Accordingly, in addition to adopting a general policy of encouraging the development of RTGs, we believe it is also important to provide guidance regarding the basic components that should be included in RTG agreements in order to satisfy FPA requirements.

The experience drawn from the RTGs developing in various areas of the country indicates that there is a need for flexibility in forming these voluntary associations and the agreements that govern them, in order to reflect specific geographic, operational, historical, or other circumstances of the parties. RTG governing agreements may differ substantially both substantively and in terms of the level of detail. For example, an RTG governing agreement may contain only general criteria for determining the rates that will be charged for transmission services, detailed rate formulations, or no price provisions at all.[13] Likewise, a governing agreement may contain only general criteria regarding terms and conditions of service, or it may specify detailed terms and conditions. We believe it is crucial to RTG development to permit considerable flexibility regarding the formation of RTGs and RTG agreements, particularly at this early stage and in light of the desire to encourage voluntary participation in RTGs. Therefore, parties may file any RTG agreement that they believe satisfies their contractual needs and complies with the substantive standards of the FPA. Still, the Commission believes that RTG agreements should, at a minimum, contain the following basic components:

1. (§ 2.21(b)(1)) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

Component No. 1 allows for the broadest possible membership for RTGs, including foreign utilities that are interconnected with the national grid.[14] Numerous commenters emphasized the importance of the broadest possible membership.[15] Broad membership will extend the benefits of RTGs to the greatest number of market participants, thereby leading to greater efficiency.

In regard to participation by foreign utilities, such entities currently participate in existing reliability councils and power pools. Domestic and foreign utilities' current participation in reliability councils, power pools and commercial transactions over the existing international boundary facilities should be taken as models to draw from in order to structure continuing, viable working relationships in newly forming RTGs. Furthermore, the history of international cooperation on transmission issues (such as resolution of the Lake Erie loop flow problem)[16] provides evidence that inclusion of foreign utilities in RTG associations will be beneficial.

Component No. 1 also provides that the geographic area covered by an RTG agreement should be sufficiently large and contiguous. It is implicit in section 202(a) (which concerns "regional districts" for voluntary coordination and interconnection) that there should be coordinated operation in areas large enough and contiguous enough for economic efficiency.[17] Many commenters also made this point.[18]

2. (§ 2.21(b)(2)) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

Component No. 2 provides for adequate consultation and coordination with states. Many commenters,[19] representing transmission-owning utilities and transmission-dependent entities as well as the states themselves, pointed out the need for involvement of the states in RTGs. We agree that consultation and coordination with the states are critical to the successful implementation of RTGs, especially in view of the fact that states have authority over retail rates which recover transmission costs, integrated resource planning, and siting of transmission facilities. In addition, state involvement in RTGs can allow state agencies to improve communications with utilities and with each other in dealing with transmission concerns, and can facilitate coordinated treatment of siting issues among the states.

It will be our policy to encourage RTGs to involve the states in whatever way is most effective. State participation is important particularly in the formative stages of RTGs. RTGs are encouraged to seek state participation during formation to ensure that the RTG's governing agreement recognizes that actions taken by RTG members under an RTG agreement must be consistent with state and local law.

3. (§ 2.21(c)(1)) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services

[12] Any jurisdictional entity seeking to invoke any other basis for jurisdiction over an RTG should set forth its arguments that such other basis exists.

[13] The Commission recently issued an inquiry on transmission pricing. Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Notice of Technical Conference and Request for Comments, 64 FERC ¶ 61,109 (1993), 58 FR 36400 (July 7, 1993). Since the FPA does not mandate the use of a particular method in setting rates, the Commission may decide, for example, that in certain circumstances either "postage stamp" rates or distance-sensitive rates would be just and reasonable. The Commission envisions that an RTG may propose a particular pricing method for its region, which the Commission will accept if it finds the method is just, reasonable, and not unduly discriminatory or preferential. Ultimately, however, the Commission must ensure that any rate developed using the method is just, reasonable, and not unduly discriminatory or preferential. If RTG participants are able to reach agreement with regard to specific rates, the RTG agreement should specify the type of rate (e.g., tariff, individual rate schedules, formula), the underlying pricing method, and any necessary cost support.

[14] The term "foreign utilities," as used in this document, means electric utilities that are not located in the United States but are interconnected with the United States transmission grid.

[15] See, e.g., Comments of Ohio Edison Company at 3, Edison Electric Institute at 3, the National Independent Energy Producers at 4, Electric Consumers at 15–16, the Electric Generation Association at 5.

[16] See The Transmission Task Force's Report to the Commission, October, 1989 at 62–66.

[17] FPA section 202(a) was transferred to the Department of Energy in the DOE Organization Act. See 42 U.S.C. 7151, 7172.

[18] See, e.g., Comments of Utilicorp United, Inc. at 4–5, American Public Power Association at 13, Cajun Electric Power Cooperative, Inc. at 11, and Department of Energy at 8–9.

[19] See e.g., Comments of National Association of Regulatory Utility Commissioners (joint comments with, among others, Electricity Consumers) at 6–7, the National Regulatory Research Institute at 1, Municipal Electric Utilities of Wisconsin at 2–6, Missouri Public Service Commission at 1–3, and the Large Public Power Council at 18–19.

for other members, including the obligation to enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and conditions under which transmission services will be offered.

Component No. 3 provides for an affirmative obligation to provide transmission services. Many commenters [20] argued that this is essential to an RTG. An inability to obtain service on reasonable terms and conditions will likely result in filings with the Commission under sections 211 and 212 of the FPA. Section 211 does not place a limit on the meaning of the term "transmission services" and provides that the Commission can order facilities to be enlarged, if needed, to provide requested service. Accordingly, the service obligation of RTG members should extend to all types of transmission services and should include a commitment to expand or upgrade facilities when needed to meet service requirements. Such a commitment by RTG transmitting utilities will assure members that they can obtain transmission services similar to those that the Commission could order upon application under sections 211 and 212. RTGs thus may help to secure the benefits of expanded transmission access, such as facilitating competitive generation markets, without the additional costs of lengthy regulatory proceedings.

4. (§ 2.21(c)(2)) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. AN RTG agreement should include as much detail as possible with regard to operational and planning procedures.

Component No. 4 provides for coordinated transmission planning and sharing of transmission planning information.[21] The coordinated planning process should be open to participation by all members and should address the transmission needs of members as well as non-members. The term "coordinated planning" is a broad term that should encompass the goal of efficient use and expansion of the nation's transmission system. The term "efficient expansion" goes beyond planning needed for reliability purposes. It also includes planning to make expansions that are economically justified from a regional perspective. This component assures that the economic trade-offs between generation and transmission expansion will be weighed appropriately.

Another key aspect of coordinated planning, in our view, is that it addresses the needs not only of the region encompassed by the RTG, but also of the surrounding areas that have transmission assets that interact with those of the RTG. Transmission upgrades in one part of a regional network can affect the operations in another part because power flows freely within the larger grid. RTGs should not only plan for efficient expansion within their own boundaries, but also should coordinate with one another to assure that bottlenecks do not develop on the boundaries between RTGs and that existing bottlenecks are appropriately eliminated. We believe that the development of coordinated plans can assist in removing impediments to power transfers within and among the RTGs that share a larger grid.

5. (§ 2.21(b)(3)) An RTG agreement should include fair and non-discriminatory governance and decisionmaking procedures, including voting procedures.

Component No. 5 provides for fair and non-discriminatory governance and decisionmaking procedures. No commenter opposed such a standard, and transmission-dependent entities expressed particular concern that they not be powerless within an RTG. The Commission will not specify in this Policy Statement what specific governance rules or features would be acceptable. In general, we think an RTG should have rules or procedures to protect the rights of entities that are more susceptible to the exercise of market power, such as transmission dependent utilities (TDUs). If the voting rules permit transmission owners to dominate the RTG, for example, this would disadvantage weaker users and would be unfair.[22] An RTG may wish to strive for consensus when dealing with regional grid issues that affect most members. Accordingly, super-majority voting rules may be appropriate in some circumstances. Different regions and organizations may wish to address these issues in their own manner. The Commission believes that RTGs must have substantial flexibility in designing governance procedures to deal with the difficulties that will be encountered. The procedures must be fair and non-discriminatory if an RTG is to meet the objectives discussed above.

6. (§ 2.12(c)(3)) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

Component No. 6 provides for voluntary dispute resolution procedures. The Commission particularly encourages RTGs to develop high quality alternative dispute resolution procedures [23] for resolving technical and reliability issues. As discussed in detail infra, we encourage proposals under which we would afford substantial deference to outcomes resulting from appropriate alternative dispute resolution (ADR) procedures that are specified in the RTG agreement.

7. (§ 2.21(c)(4)) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

Component No. 7 provides for an exit provision for RTG members who wish to leave the RTG. If a party has accepted a responsibility under an RTG agreement and then decides to leave the RTG, the obligation of such departing party to comply with its prior commitments should be set forth in the RTG agreement.[24]

*D. Other Issues*

(1) Adoption of Policy Statement Rather Than Rule

In the comments on the consensus legislative proposal, EEI and many others, including several TDUs, argued that the Commission should issue a general statement of policy rather than a rule with specific requirements. These commenters argued that the Commission should review RTG agreements on a case-by-case basis as they are filed. Several reliability councils and power pools, as well as others, are concerned that a rule would stifle the developing RTGs by imposing uniform, detailed requirements. A policy statement would allow flexibility for individual RTGs to form in ways that are suited to accommodate unique

[20] See e.g., Comments of Edison Electric Institute at 3, 16–17, National Independent Energy Producers at 3, Electricity Consumers at 17–19, and Cajun Electric Power Cooperative at 11–12.

[21] Several commenters supported a coordination role for RTGs. See e.g., comments of American Public Power Association at 11–13, Electrical Generation Associated at 4–5, Iowa Association of Municipal Utilities at 5–6.

[22] See, e.g., Comments of the Electricity Consumers Resource Council at 21–22, American Public Power Association at 14, Missouri Basin Municipal Power Agency at 26–27, and Northeast Texas Electric Cooperative at 3.

[23] See Comments of the Electric Generation Association at 6, Southern Maryland Electric Cooperative at 11–12.

[24] For example, under Article II of the Mid-Continent Area Power Pool Agreement, any participant may withdraw by giving four years' written notice.

circumstances in different regions of the country.

Many other commenters, particularly certain TDUs, supported issuance of a rule that would adopt the "consensus proposal;" some suggested various changes, and others argued that it should be adopted unchanged to preserve the consensus of support.

We have decided to adopt a policy statement rather than a rule because, as discussed above, the ongoing development of RTGs clearly indicates a need for flexibility to adapt to specific geographic, operational, historical or other circumstances. A rule with specific, detailed requirements might stifle the development that is already taking place and discourage the evolution of different types of RTGs that respond to the needs of particular regions of the country. This Policy Statement is designed to allow sufficient flexibility for various creative solutions, while at the same time ensuring that RTG agreements are just, reasonable, and not unduly discriminatory or preferential.

(2) State Issues

A general concern was raised in the comments on the consensus proposal concerning Federal preemption of state rights and authorities as a result of the Energy Policy Act. These concerns stem in large part from the provisions in the Energy Policy Act which expand the Commission's authority to order transmission services upon application, including any enlargement of transmission capacity necessary to provide such services, and the possible adverse impacts on retail customers that may result from such orders.

In reference to concerns regarding enlargement of facilities, Congress was clear in its intention to preserve state authorities.[25] RTGs that deal with enlargement of capacity must obtain necessary state approvals for the construction of transmission facilities.

The ultimate resolution of concerns regarding the impact of RTGs on retail customers will be largely driven by any changes in transmission pricing that result from the implementation of the Energy Policy Act. However, the creation of RTGs may also substantially influence these concerns.

Some see a need to improve collaboration between state and Federal authorities as a result of the Energy Policy Act provisions. The creation of RTGs pursuant to this Policy Statement could help to meet this perceived need. RTGs by their very nature are collaborative mechanisms. In order for an RTG to reach successful outcomes, it must simultaneously satisfy not only the needs of the transacting parties but the requirements of state and Federal regulatory authorities as well. This collaborative effect would also reach to possible conflicts between the various state interests involved. In sum, properly designed and functioning RTGs will inherently provide effective, close collaboration among all parties necessary to assure an efficient transmission system. The extent of collaboration and coordination with states would be one factor influencing the degree of deference the Commission would give to consensual resolutions reached under an RTG.

3. Deference to RTG Alternative Dispute Resolutions

Some commenters argued that the Commission cannot afford any deference to an alternative dispute resolution technique such as arbitration. Several referred to the Commission's lack of authority to "delegate" its authority to private organizations. Others argued that while parties to contracts may agree to arbitration, states must be able to challenge these contracts before the Commission without being hampered by a deference standard.

On the other hand, many commenters argued that alternative dispute resolution proceedings, with some degree of Commission deference, are critical to RTGs. These commenters argued that the Commission has authority to allow parties to a contract to bind themselves to reasonable arbitration procedures with limited Commission review; in other words, a party may contract away its statutory right to Commission review under the normal "just and reasonable" standard.

Another argument raised is that the RTGs' alternative dispute resolution procedures should be used only for technical issues, such as reliability and the adequacy of existing transmission; RTG members could go directly to the Commission with disputes over policy matters (such as cost allocation or the terms and conditions of access).

Whether consensual resolutions are reached by direct negotiation among the parties or by various methods of ADR,[26] the Commission has the authority and is willing to give appropriate deference to outcomes produced by agreement of the parties. In either case, the Commission must ensure that the resolution is not unjust, unreasonable, or unduly discriminatory or preferential, as required by the FPA, which we are bound to enforce, and that it does not result from the exercise of market power by one party over another.

Voluntary resolution of disputes is consistent with the statutory scheme under the FPA that relies on contracts between the parties in the first instance.[27] It is also consistent with the Alternative Dispute Resolution Act.[28] We believe that an RTG agreement that assures that transmission owners cannot exert significant market power or control over non-owners can provide the Commission the assurance it needs to give appropriate deference to voluntary resolutions or resolutions reached as a result of ADR. While the Commission cannot "delegate" its authority, it can give deference to resolutions which meet the standards of the FPA.

One type of ADR is arbitration. We note that arbitration of certain FPA-related matters is not a new concept at the Commission.[29] We have long recognized the value of parties agreeing to attempt to resolve matters through other means before coming to the Commission. We have pointed out that it is "desirable and appropriate, if otherwise consistent with the public interest, to attempt to adhere to the results of a binding arbitration award" because arbitration is a valuable way to avoid time-consuming and expensive administrative proceedings.[30] Moreover, where parties have agreed to submit disputes to fair arbitration procedures before resorting to the Commission, the Commission will insist that they do

[25] Under section 211(d)(1)(C) of the FPA, added by the Energy Policy Act, the Commission must modify or terminate an order requiring enlargement of transmission facilities if it finds, upon application and after notice and opportunity for hearing, that the transmitting utility after making a good faith effort, failed to obtain necessary approvals or property rights under applicable Federal, State, and local laws.

[26] ADR can include, but is not limited to, conciliation, facilitation, mediation, early neutral evaluation, fact-finding, mini-trials, and non-binding or binding arbitration. See Administrative Dispute Resolution, Notice of Inquiry, IV FERC Stats. & Regs. ¶ 35,823.

[27] *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 337–9 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[28] 5 U.S.C. 581–593.

[29] The Commission has accepted arbitration provisions for non-rate matters such as determining what is a reasonable amount of time for new transmission facilities to be built. Public Service Co. of Indiana, Opinion No. 349, 51 FERC ¶ 61,387, dismissed No. 90–1528 (D.C. Cir. January 21, 1992). The Commission has also allowed arbitration of rate disputes. Kansas Gas and Electric Co., 28 FERC ¶ 61,112 (1984).

[30] Kansas Gas and Electric Co., 28 FERC ¶ 61,112 at 61,195 (1984); accord, Madison Gas and Electric Co., 56 FERC ¶ 61,447 at 62,579 (1991); North Carolina Eastern Municipal Power Agency v. Carolina Power and Light Co., 45 FERC ¶ 61,487 at 62,518 (1988), rehearing denied, 46 FERC ¶ 61,181 (1989); Pacific Gas and Electric Co., 43 FERC ¶ 61,403 at 62,035–6 (1988).

so.[31] There are a variety of other ADR procedures, in addition to arbitration, that RTGs could use.

The Commission encourages RTGs to develop alternative dispute resolution procedures for resolving transmission issues, particularly those involving technical and reliability issues. We are also willing to entertain proposals for the Commission to give some degree of deference to decisions rendered pursuant to an ADR process, pursuant to procedures that are specified in the RTG agreement and that assure due process for all participants.

We will not attempt to decide in this Policy Statement exactly what degree of deference we will be willing to afford. This may depend on a number of factors including, but not limited to, the type of issue to be resolved, the degree of specificity in the RTG agreement, the ability of any party to exercise market power, and type of ADR being used. We will make that decision based on the particular facts of the proposals presented to us.

For example, it may be appropriate to give considerable deference to an arbitrator's finding on a purely factual issue, such as how much an improvement to the system will cost. This is somewhat analogous to factual decisions of administrative law judges, to which we afford considerable deference. However, just as we would not defer to an administrative law judge's decision that is directly contrary to Commission policy, we would not defer to an arbitrator's decision that is directly contrary to Commission policy. Other factors that might influence the degree of deference we would afford to the outcome of a dispute resolution process include, for example, whether a party can or does object to the decision, the degree to which the decision was reached under procedures that maximize fairness, and the degree to which the decision is based on a well-developed record.

4. Antitrust Concerns

Several commenters expressed concern that RTGs may raise antitrust concerns. Some argued that the Commission cannot guarantee immunity from antitrust proceedings.[32] While the Commission can provide no guarantees, we agree with other commenters[33] that RTGs need not violate the antitrust laws. As the Department of Justice pointed out in its comments,[34] the purpose of RTGs is to encourage competition in generation, not to discourage it, by making transmission more easily available to a wider spectrum of generating entities and by increasing the efficiency of the transmission system. More easily available wheeling should make the market work better and should lead to greater economic efficiency.

In this regard, we note that RTGs are in many ways analogous to power pools, which have been found not to violate the antitrust laws. In *Central Iowa Power Cooperative* v. *FERC*,[35] the court rejected arguments that the Mid-Continent Area Power Pool (MAPP) violated the antitrust laws or policies. The court pointed out that FPA section 202 expresses Congress' view that coordination is in the public interest. It specifically rejected arguments that MAPP constituted price fixing under the Sherman Act because of the pool's service schedules, which set forth rates.

5. Filing Procedures

The Commission expects that most RTGs will contain public utilities. As such, RTG agreements must, at a minimum, be filed under section 205(c) as contracts affecting or relating to transmission services provided by public utilities. We anticipate that most such filings will be made by one or more public utility members, on behalf of all public utilities in the RTG.[36] If the filing entity believes that the filing will become effective automatically if the Commission does not act on the filing within 60 days,[37] it should so state in the first paragraph of the cover letter in bold-faced type and should explain the arguments on which that view is based.

**List of Subjects in 18 CFR Part 2**

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 2, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7353.

2. Part 2 is amended by adding § 2.21 to read as follows:

**§ 2.21 Regional Transmission Groups.**

(a) *General policy.* The Commission encourages Regional Transmission Groups (RTGs) as a means of enabling the market for electric power to operate in a more competitive and efficient way. The Commission believes that RTGs can provide a means of coordinating regional planning of the transmission system and assuring that system capabilities are always adequate to meet system demands. RTG agreements that contain components that satisfy paragraphs (b) and (c) of this section generally will be considered to be just, reasonable, and not unduly discriminatory or preferential under the Federal Power Act (FPA). The Commission encourages RTG agreements that contain as much detail as possible in all of the components listed, particularly if the RTG participants will be seeking Commission deference to decisions reached under an RTG agreement.

(b) *Organizational components.* (1) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

(2) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

(3) An RTG agreement should include fair and nondiscriminatory governance and decisionmaking procedures, including voting procedures.

(c) *Other components.* (1) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services for other members, including the obligation to enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and

[31] Pacific Gas and Electric Co., 44 FERC ¶ 61,010 at 61,053 (1988).

[32] See Comments of American Public Power Association at 9, Old Dominion Electric Cooperative at 1, Central Power and Light Company at 10.

[33] See, *e.g.*, Comments of Edison Electric Institute at 31–32, Public Generating Pool at 10, Southern California Edison Co. at 5.

[34] DOJ Comments at 1–7.

[35] 606 F.2d 1156 (D.C. Cir. 1979).

[36] See Western Systems Power Pool, 55 FERC ¶ 61,099, 61,301 (1991), reh'g den'd, 55 FERC ¶ 61,495 (1991), aff'd sub nom. *Environmental Action, et al.* v. *FERC*, No. 91–1404 (D.C. Cir. July 2, 1993).

[37] As with all section 205 filings, the Commission intends to notice RTG filings in the Federal Register and to provide and opportunity for comment prior to Commission action on the filing.

conditions under which transmission services will be offered.

(2) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. An RTG agreement should include as much detail as possible with regard to operational and planning procedures.

(3) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

(4) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

(d) *Filing procedures.* Any proposed RTG agreement that in any manner affects or relates to the transmission of electric energy in interstate commerce by a public utility, or rates or charges for such transmission, must be filed with the Commission. Any public utility member of a proposed RTG may file the RTG agreement with the Commission on behalf of the other public utility members under section 205 of the FPA.

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

[T.D. 93–60]

## Consolidation of Norfolk and Newport News, and Richmond-Petersburg, VA, as Customs Ports for Marine Purposes

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by consolidating the ports of entry of Norfolk and Newport News, and Richmond-Petersburg, Virginia for marine purposes only. This change enables Customs to obtain more efficient use of its personnel, facilities and resources. It eliminates duplication of port functions and permits better control of staffing resources without impairing services to area businesses or the general public. This amendment does not change any individual port's status, and will not reduce staffing levels. It is designed to simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

**EFFECTIVE DATE:** September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 927–0456.

**SUPPLEMENTARY INFORMATION:**

### Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs regulations (19 CFR 101.3), by consolidating, for marine purposes only, the port of entry of Norfolk and Newport News, and the port of entry of Richmond-Petersburg, Virginia, located in the Norfolk District in the Southeast Region.

Inasmuch as these two ports are located within approximately 75 miles of one another on the James and Elizabeth Rivers and perform similar services, it is estimated that the consolidation will significantly reduce expenses without impairing Customs ability to provide services to area businesses or to the general public.

Under this amendment, the laws and regulations administered and enforced by Customs relating to the entry of merchandise would continue to apply at Norfolk and Newport News and at Richmond-Petersburg, with both of the ports retaining their port code as well as their current geographical limits. However, the two ports are now to be considered to be one port for the purposes of the navigation laws. Accordingly, all reports of arrival and entry and clearance requirements prescribed by the Customs and navigation laws administered and enforced by Customs, such as reporting arrival when entering a port and making formal entry when arriving at a Customs port from foreign or another U.S. port (if a foreign-registered vessel), will only have to be complied with once when a vessel is moving in the waters of Norfolk and Newport News and Richmond-Petersburg. Further, a vessel required to obtain a permit to proceed to move between one U.S. port and another will no longer have to receive such a permit to proceed between Norfolk and Newport News and Richmond-Petersburg.

It is anticipated that the consolidation also will result in reducing penalties incurred under the Customs and navigation laws. Penalties were assessed in the past when carriers failed to enter and properly clear merchandise being shipped in a residue cargo movement between the ports of Norfolk and Newport News, and Richmond-Petersburg. This will no longer be considered a violation of the laws as a carrier will no longer be required to enter and clear merchandise when moving from one of these ports to the other. The reduction of penalty cases will reduce paperwork for carriers, importers and Customs.

### Analysis of Comments

Customs published a notice of proposed rulemaking in the **Federal Register** on August 10, 1992 (57 FR 35530), and invited public comment on the proposed amendment. In response to this invitation, Customs received approximately 10 comments.

All the comments which addressed the scope of the proposal—the consolidation of the ports for marine purposes—supported it.

Several comments were addressed to an issue which was outside the scope of the notice, but which is apparently one of concern to the Norfolk and Newport News areas. These comments believed the Notice announced Customs intention to either consolidate Norfolk and Newport News into one port of entry or to reduce the present level of Customs Service activity at either location.

Customs is planning neither of those actions. The Notice specifically stated that the adoption of the amendment would have no effect on the current geographical boundaries of the ports involved. The basis for the misunderstanding was that some people were unaware that, for Customs purposes, the ports of Norfolk and Newport News had already been consolidated. This consolidation had occurred when the Customs Service was reorganized by the President's message dated March 3, 1913, which was published as T.D. 33249. That message states, in pertinent part, that the Customs District of Virginia would include "* * * all of the State of Virginia, except the county of Alexandria, with district headquarters at Norfolk, in which Norfolk and Newport News, Richmond, Petersburg, Cape Charles City, Chincoteague, and Reedville shall be ports of entry. The port of Norfolk shall include both of said cities and the waters and shores of

Hampton Roads." Later in the message, the collectors of Customs (now known as District Directors) are instructed to maintain their offices at the headquarters of their districts "with the exception of the collectors for the districts of Virginia, * * * who shall maintain a principal office at both Newport News and Norfolk, * * *" The ports of Richmond and Petersburg were similarly consolidated for Customs purposes in T.D. 68–179.

As stated earlier, adoption of this amendment will result in no change in the current geographical limits of either port. However, it is necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 1011.3(b)), to reflect the consolidation of these ports for the purposes of the navigation laws.

**Regulatory Flexibility Act and Executive Order 12291**

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued after notice and comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

**Amendment to the Regulations**

Part 101 Customs Regulations (19 CFR part 101) is amended as set forth below:

## PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 2, 58(c), 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

**§ 101.3 [Amended]**

2. Section 101.3 (b) is amended by adding the following phrase in the listing of Customs regions, districts and ports of entry, in the Southeast Region, under the column headed "Name and headquarters", under the listing "Norfolk, Va.":

"(The ports of Norfolk and Newport News and Richmond-Petersburg, consolidated for purposes of the navigation laws. See T.D. 93–60.)"

**George J. Weise,**

*Commissioner of Customs.*

Approved: July 12, 1993.

Ronald K. Noble,

*Assistant Secretary of the Treasury.*

[FR Doc. 93–18659 Filed 8–4–93; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 5

### Delegations of Authority and Organization; Center for Drug Evaluation and Research

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority for the Center for Drug Evaluation and Research (CDER) to reflect the current structure of the Office of Over-the-Counter (OTC) Drug Evaluation after the recent CDER reorganization. In addition, with the objective of achieving a more expeditious process, FDA is also amending the regulations regarding the authority to grant or deny certain citizen petitions that request exemption from a general overdose warning and exemption from OTC drug administrative procedures.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending § 5.31 *Petitions under part 10* (21 CFR 5.31) by adding to § 5.31(d) the authority to grant or deny citizen petitions under § 10.30 (21 CFR 10.30) requesting exemption from a general overdose warning required under § 330.1(g) (21 CFR 330.1(g)) and petitions requesting exemption from OTC drug administrative procedures under § 330.10 (21 CFR 330.10). Section 5.31(d)(2) is further amended by removing the Director and Deputy Director, Office of Drug Standards, CDER, and by adding the Director and Deputy Director, Office of OTC Drug Evaluation, CDER, to reflect a change brought about by the recent CDER reorganization.

The additional delegations will allow the center to be more expeditious in processing such citizens' petitions.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

**List of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.31 is amended by revising the introductory text of paragraph (d) and paragraph (d)(2) to read as follows:

**§ 5.31 Petitions under part 10.**

* * * * *

(d) The following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter requesting exemption from the general pregnancy-nursing warning for over-the-counter (OTC) drugs required under § 201.63 of this chapter, requesting exemption from a general overdose warning required under